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LEGISLATION, MEDICAL - ILLINOIS

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MEDICAL PRACTICE IN ILLINOIS.

1892.



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ILLINOIS STATE BOARD OF HEALTH.

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[S. B. H. No. 275-1m-4-15-92.]



## THE ILLINOIS MEDICAL PRACTICE ACT.

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AN ACT to Regulate the Practice of Medicine in the State of Illinois.  
Approved June 16, 1887. In force July 1, 1887.

QUALIFICATIONS FOR PRACTICE—DIPLOMA—EXAMINATION—CERTIFICATE OF STATE BOARD OF HEALTH.] Section 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That no person shall practice medicine in any of its departments in this State unless such person possesses the qualifications required by this act.

If a graduate in medicine, he must present his diploma to the STATE BOARD OF HEALTH for verification as to its genuineness. If the diploma is found genuine, and from a legally-chartered medical institution in good standing, and if the person named therein be the person claiming and presenting the same, the STATE BOARD OF HEALTH shall issue a certificate to that effect signed by all the members thereof, and such certificate shall be conclusive as to the right of the lawful holder of the same to practice medicine in this State.

If not a graduate, the person practicing medicine in this State shall present himself before said BOARD and submit himself to such examination as the BOARD may require, and if the examination be satisfactory to the BOARD, the said BOARD shall issue its certificate in accordance with the facts, and the lawful holder of such certificate shall be entitled to all the rights and privileges herein mentioned.

STATE BOARD OF HEALTH—ORGANIZATION, ETC.—CERTIFICATES.] § 2. The STATE BOARD OF HEALTH shall organize within three months after the passage of this act; it shall procure a seal, and shall receive, through its secretary, applications for certificates and examinations; the president and secretary shall have the authority to administer oaths, and the BOARD to take testimony in all matters relating to its duties; it shall issue certificates to all who furnish satisfactory proof of having received diplomas or licenses from legally-chartered medical institutions in good standing as may be determined by the BOARD; it shall prepare three forms of certificates, one for persons in possession of such diplomas or licenses, the second for candidates examined and favorably passed on by the BOARD, and a third for persons to whom certificates may be issued as hereinafter provided in section 12 of this act; it shall furnish to the



county clerks of the several counties a list of all persons receiving certificates. In selecting places to hold its meetings, it shall, as far as is reasonable, accommodate applicants residing in different sections of the State, and due notice shall be published of all its meetings for examination.

Certificates shall be signed by all the members of the BOARD, and the Secretary of the BOARD shall receive from the applicant a fee of five (5) dollars for each certificate issued to such graduate or licentiate. Graduates or licentiates in midwifery to pay the sum of two (2) dollars for each certificate. All such fees for certificates shall be paid by the secretary into the treasury of the BOARD.

VERIFICATION OF DIPLOMA—AFFIDAVIT.] § 3. The verification of the diploma shall consist in the affidavit of the holder and applicant that he is the lawful possessor of the same, and that he is the person therein named. Such affidavit may be taken before any person authorized to administer oaths, and the same shall be attested under the hand and seal of such officer, if he have a seal; and any person swearing falsely shall be deemed guilty of perjury, and punished accordingly.

Graduates may present their diplomas and affidavits, as provided in this act, by letter or by proxy, and the STATE BOARD OF HEALTH shall issue its certificate the same as though the owner was present.

EXAMINATIONS BY BOARD.] § 4. All examinations of persons not graduates or licentiates, shall be made directly by the BOARD, and the certificates given by the BOARD shall authorize the possessor to practice medicine and surgery in the State of Illinois.

CERTIFICATE TO BE RECORDED.] § 5. Every person holding a certificate from the STATE BOARD OF HEALTH shall have it recorded in the office of the clerk of the county in which he resides, within three months from its date, and the date of recording shall be indorsed thereon. Until such certificate is recorded as herein provided, the holder thereof shall not exercise any of the rights or privileges conferred therein to practice medicine.

Any person removing to another county to practice, shall record the certificate in like manner in the county to which he removes, and the holder of the certificate shall pay to the county clerk the usual fee for making the record.

RECORD TO BE KEPT BY COUNTY CLERK.] § 6. The county clerk shall keep, in a book provided for the purpose, a complete list of the certificates recorded by him, with the date of the issue of the certificate. If the certificate be based on a diploma or license, he shall record the name of the medical institution conferring it, and the date when conferred. The register of the county clerk shall be open to public inspection during business hours.

FEES FOR EXAMINATIONS.] § 7. The fees for the examination of non-graduates shall be as follows: Twenty (20) dollars for an examination in medicine and surgery; ten (10) dollars for an examination in midwifery only; and said fees shall be paid into the treasury of the BOARD. If an

applicant fails to pass said examination his or her fee shall be returned. Upon successfully passing the examination the certificate of the BOARD shall be issued to the applicant without further charge.

CHARACTER OF EXAMINATION.] § 8. Examinations may be made in whole or in part in writing, and shall be of an elementary and practical character, but sufficiently strict to test the qualifications of the candidate as a practitioner.

REFUSAL OR REVOCATION OF CERTIFICATE.] § 9. The STATE BOARD OF HEALTH may refuse to issue the certificates provided for in section 2, to individuals guilty of unprofessional or dishonorable conduct and it may revoke such certificates for like causes. In all cases of refusal or revocation the applicant may appeal to the Governor, who may affirm or overrule the decision of the BOARD, and this decision shall be final.

DEFINITION OF PRACTICING PHYSICIAN.] § 10. Any person shall be regarded as practicing medicine, within the meaning of this act, who shall treat, operate on, or prescribe for any physical ailment of another. But nothing in this act shall be construed to prohibit service in cases of emergency, or the domestic administration of family remedies. And this act shall not apply to commissioned surgeons of the United States Army, Navy or Marine Hospital service in the discharge of their official duties.

ITINERANT VENDOR OF DRUGS, ETC.—LICENSE.] § 11. Any itinerant vendor of any drug, nostrum, ointment or appliance of any kind intended for the treatment of disease or injury, or who shall, by writing or printing, or any other method, profess to cure or treat disease or deformity, by any drug, nostrum, manipulation or other expedient, shall pay a license of one hundred (100) dollars per month into the treasury of the BOARD, to be collected by the STATE BOARD OF HEALTH, in the name of the People of the State of Illinois, for the use of said BOARD OF HEALTH. And it shall be lawful for the STATE BOARD OF HEALTH to issue such license on application made to the STATE BOARD OF HEALTH, such license to be signed by the President of the BOARD, and attested by the Secretary of the BOARD, with the seal of the BOARD.

Any such itinerant vendor who shall vend or sell any such drug, nostrum, ointment or appliance without having a license so to do, shall, if found guilty, be fined in any sum not less than one hundred dollars, and not exceeding two hundred dollars for each offense, to be recovered in an action of debt before any court of competent jurisdiction. But such BOARD may for sufficient cause refuse such license.

PENALTY FOR PRACTICING WITHOUT CERTIFICATE—USING ANOTHER'S DIPLOMA.] § 12. Any person practicing medicine or surgery in the State without the certificate issued by this BOARD, in compliance with the provisions of this act, shall for each and every instance of such practice forfeit and pay to the People of the State of Illinois, for the use of the said STATE BOARD OF HEALTH, the sum of one hundred (100) dollars for the first offense, and two hundred (200) dollars for each subsequent offense, the same to be recovered in an action of debt before any court of competent jurisdiction, and any person filing or attempting to file as his own the



diploma or certificate of another, or a forged affidavit of identification, shall be guilty of a felony, and upon conviction, shall be subject to such fine and imprisonment as are made and provided by the statutes of the State for the crime of forgery.

*Provided*, that all persons who have been practicing medicine continuously for ten years within this State prior to the taking effect of the act to which this is an amendment, and who have not, under said original act, obtained a certificate from the said BOARD OF HEALTH to practice medicine in this State, shall upon proper application to said BOARD OF HEALTH receive such certificate, unless it shall be ascertained and determined by said BOARD OF HEALTH that the person so applying for a certificate is of immoral character, or guilty of unprofessional or dishonorable conduct, in which case said BOARD OF HEALTH may reject such application.

*And, provided*, that such application for a certificate shall be made within six months after the taking effect of this act, and all persons holding a certificate on account of ten years' practice shall be subject to all the requirements and discipline of this act, and the act to which this is an amendment, in regard to their future conduct in the practice of medicine the same as all other persons holding certificates, and all persons not having applied for or received such certificate within six months after the taking effect of this act, and all persons whose applications have for the causes herein named been rejected or certificates revoked, shall, if they shall practice medicine, be deemed guilty of practicing in violation of law and shall suffer the penalties herein provided.

JUDGMENT UPON CONVICTION—APPEAL.] § 13. Upon conviction of either of the offenses mentioned in this act, the court shall, as a part of the judgment, order that the defendant be committed to the common jail of the county until the fine and costs are paid, and upon failure to pay the same immediately, the defendant shall be committed under said order.

*Provided*, that either party may appeal in the same time and manner as appeals may be taken in other cases, except that where an appeal is prayed in behalf of the People, no appeal bond shall be required to be filed, whether the appeal be from a justice of the peace, or from the county or circuit court, or from the appellate court. But it shall be sufficient in behalf of the People of the State of Illinois, for the use of the STATE BOARD OF HEALTH, to pray an appeal, and thereupon appeal may be had without bond or security.

REPEAL.] § 14. All acts and parts of acts inconsistent or in conflict with this act are hereby repealed.

## RECOGNITION OF MEDICAL COLLEGES.

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Under the act to regulate the practice of medicine in the State of Illinois all practitioners are divided into two classes. First, graduates of "legally-chartered medical institutions in good standing, *as may be determined by the STATE BOARD OF HEALTH.*" [See section 2, Medical Practice Act.] Second, non-graduates—who are required by the law to undergo an examination by the BOARD.

To be held "in good standing" in Illinois, medical colleges are required to comply with the following schedule, adopted and promulgated by the STATE BOARD OF HEALTH in July, 1887. This schedule took effect at the close of the sessions of 1890-91. No diploma issued since that date is accepted as the basis for a State certificate unless issued in accordance with this schedule.

*The only other mode of obtaining a State certificate is through an examination by the BOARD.*

### SCHEDULE OF REQUIREMENTS.

I. *Conditions of Admission to Lecture Courses.*—1. Credible certificate of good moral standing. 2. Diploma of graduation from a good literary and scientific college, or high school, or a first-grade teacher's certificate. Lacking such evidence of preliminary education—a thorough examination in the branches of a good English education, including mathematics, English composition and elementary physics or natural philosophy.

II. *Branches of Medical Science to be included in the Course of Instruction.*—1. Anatomy. 2. Physiology. 3. Chemistry. 4. Materia Medica and Therapeutics. 5. Theory and Practice of Medicine. 6. Pathology. 7. Surgery. 8. Obstetrics and Gynecology. 9. Hygiene. 10. Medical Jurisprudence (Forensic Medicine).

III. *Length of Regular or Graduating Courses.*—1. The time occupied in the regular courses or sessions from which students are graduated shall not be less than five months, or twenty weeks, each. Three full courses



of lectures, no two within one and the same year of time, shall be required for graduation with the degree of Doctor of Medicine.

IV. *Attendance and Examinations, or Quizzes.*—1. Regular attendance during each entire lecture course shall be required, allowance being made only for absence occasioned by the student's sickness, such absence not to exceed twenty per centum of the course. 2. Regular examinations or quizzes to be made by each lecturer or professor daily, or at least twice each week. 3. Final examinations on all branches—to be conducted, when practicable, by competent examiners other than the professors in each branch.

V. *Dissections, Clinics and Hospital Attendance.*—1. Each student shall have dissected during two courses. 2. Attendance during at least two terms of clinical and hospital instruction shall be required.

VI. *Time of Professional Studies.*—This shall not be less than four full years before graduation, including the time spent with a preceptor and attendance upon lectures or at clinics and hospitals.

VII. *Instruction.*—The college must show that it has a sufficient and competent corps of instructors and the necessary facilities for teaching, dissections, clinics, etc.



## MODE OF PROCEDURE UNDER THE ILLINOIS MEDICAL PRACTICE ACT.

APPENDED is all needful information as to the course of procedure to be observed in applying for a State certificate and complying with the law.

1. APPLICATIONS FOR CERTIFICATES, ETC.: Applications for certificates, or for blank affidavits, should be made to the Secretary at Springfield. The county clerks are also furnished with blank affidavits, or may obtain the same on application to the Secretary.

A special form of affidavit has been prepared for those who have lost their diplomas by fire or otherwise, and may be had on application as above.

Diplomas or licenses for verification, and affidavits properly filled out and acknowledged, together with the necessary letters of recommendation and fees for certificates, should be sent to the Secretary.

For convenience, diplomas may be presented to any member of the BOARD for verification\*. In such case the affidavit should be endorsed "Diploma verified," with the signature of the member, before being forwarded to the Secretary.

2. DIPLOMA OR LICENSE TO BE PRESENTED FOR VERIFICATION: The law requires that graduates of medicine, or those who have licenses from legally chartered medical institutions in good standing, must actually present for verification, to the STATE BOARD, their diplomas or licenses; and, in addition, such other satisfactory proofs as may be necessary. Graduates may present their diplomas or licenses and affidavits by letter or proxy.

3. AFFIDAVITS REQUIRED: Affidavit must be made that the person presenting the diploma, or license, is the lawful possessor of the same. The

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\* The members of the BOARD, 1892, are: Drs. W. A. Haskell, Alton; A. L. Clark, Elgin; B. M. Griffith, Springfield; R. Ludlam, 1823 Michigan avenue, Chicago; W. R. Mackenzie, Chester; D. H. Williams, 3034 Michigan avenue, Chicago; and F. W. Reilly, Springfield.

affidavit should state date and place of graduation, and name of medical college; length of practice in this State, as well as present place of residence.

4. **FEE FOR CERTIFICATES:** The fee for a certificate of graduation is fixed by law at five dollars.

5. **EXAMINATION OF NON-GRADUATES:** It is required by law that all persons who are not graduates in medicine or licentiates, shall, before beginning practice, be examined directly by the BOARD, which is authorized to issue State certificates to those passing the examination.

6. **APPLICATION FOR EXAMINATION:** The candidate for examination must fill out a blank form, which may be obtained on application to the Secretary. This must be sent to the office of the BOARD and, if approved, the candidate will be notified when and where to appear for examination.

7. **FEE FOR EXAMINATION:** Candidates for examination are required to pay a fee of twenty dollars, in advance—to be returned if the certificate be refused.

8. **CHARACTER OF EXAMINATION:** Examinations may be made, in whole or in part, in writing; and shall be of an elementary and practical character, but sufficiently strict to test the qualifications of the candidate as a practitioner.

9. **EXAMINATIONS TO BE MADE IN PROPRIA PERSONA:** Candidates for examination must present themselves in person before the BOARD. No examination papers can be sent out to individuals; and no examination can be limited to any one or two special topics, or branches of study or practice. The examinations will be conducted by the entire BOARD, and upon all branches usually taught in medical schools.

10. **SCHOOLS OF PRACTICE IN EXAMINATION:** Questions relating to special methods or forms of practice or therapeutics will be referred for examination to the various individual members of the BOARD, as may be indicated.

11. **EXAMINATION IN A FOREIGN LANGUAGE:** Those desiring to be examined in any other than the English language may, in the discretion of the BOARD, be examined through interpreters, furnished at their own expense and approved by the BOARD.

12. **NON-GRADUATES MUST HAVE STUDIED FOUR YEARS:** Candidates for examination must present evidence that they have studied medicine at least four years.

13. **EVIDENCE OF MORAL AND PROFESSIONAL STANDING:** All applicants for certificates, whether holding diplomas or not, are required to furnish satisfactory evidence of good moral and professional standing; such evidence (letters of recommendation,) to be filed in the office of the BOARD as part of the applicant's professional record.



14. **CERTIFICATES TO BE RECORDED IN OFFICE OF COUNTY CLERK:** Physicians are required to have *recorded*, in the office of the county clerk, the State certificate which may be received from the STATE BOARD OF HEALTH; and in case of removal to another county in the State, to have the certificate recorded in that county also.

Section 4 of the STATE BOARD OF HEALTH act requires that all physicians and midwives, without exception, practicing in this State, shall *register* their names and post-office addresses with the county clerk of the county in which they reside. This register is additional to, and independent of, the *record* of the State certificate of the BOARD, and is obligatory in each county into which the physician's or midwife's practice extends.

15. **PHYSICIANS TO REGISTER IN EACH COUNTY:** In case a physician practices in any other county than that in which he lives—he having recorded his certificate in his own county—it is not required that he have his certificate recorded in such other county or counties. He must, however, register his name in the county or counties in which his practice extends and make his returns of births and deaths occurring in those counties to the respective county clerks. In cases of professional consultation only, with resident physicians, such registration is not required.

16. **NON-RESIDENT PHYSICIANS PRACTICING IN THIS STATE AMENABLE TO THE LAW:** Physicians, residents of adjoining States, who practice in this State in counties adjoining the one in which they reside, are required to take out State certificates of practice, as required of residents of this State. They must record the same in the office of the county clerk of the county or counties in which their practice extends: make returns of births and deaths in those counties to the county clerks, and in every respect conform to all the requirements of the law incumbent upon residents of this State.

17. **CHANGE OF LOCATION:** It is important that when a change of location is made, it be promptly reported to the BOARD. Unless this is done, the official register will necessarily be incorrect.

18. **PROFESSIONAL ACTS ILLEGAL PRIOR TO RECORD OF CERTIFICATE:** No one has a right to practice until the State certificate of the BOARD is placed upon record in the county in which the individual lives. All professional acts, prior to this being done, are illegal and render the delinquent liable to prosecution.

19. **WHAT CONSTITUTES "PRACTICING MEDICINE" UNDER THE STATUTE:** The tenth section of the act to regulate the practice of medicine in the State of Illinois recites that "any person shall be regarded as practicing medicine, within the meaning of this act, who shall treat, operate on, or prescribe for any physical ailment of another."

Independently of the statutory definition, the term imports and embraces the pursuit and vocation of one who holds himself out to the public as

possessing the requisite skill to treat disease and accordingly prescribes for or treats patients as a physician. (Opinion of Attorney General Edsall, July 23, 1880.)

20. GRATUITOUS PRACTICE DOES NOT EXEMPT FROM THE LAW: If a person "practices medicine," as defined by the statute, without complying with the law, it is wholly immaterial whether he charges for his services or not. He is guilty of a violation of the law, and liable to prosecution. This, however, does not apply to gratuitous services rendered in a case of emergency by a non-qualified person.



## PROSECUTIONS UNDER THE MEDICAL PRACTICE ACT.

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Following is the form of proceeding under which to prosecute persons practicing medicine in any of its departments in the State of Illinois without possessing the qualifications required by the act approved June 16, 1887, in force July 1, 1887, entitled "Medicine and Surgery." Session Laws of 1887, page 225.

Section 12 of the Medical Practice Act provides that any person practicing medicine or surgery in the State without the certificate issued by the STATE BOARD OF HEALTH, in compliance with the provisions of the act, shall for each and every instance of such practice forfeit and pay to The People of the State of Illinois, for the use of said STATE BOARD OF HEALTH, the sum of one hundred (100) dollars for the first offense, and two hundred (200) dollars for each subsequent offense, the same to be recovered in an action of debt.

This is a penal statute and the proceeding for its violation is a civil action, begun by an ordinary summons in debt issued by a justice of the peace if the penalty for only one offense is sought to be recovered; or the summons may issue from the circuit court if a number of penalties are sued for.

The action should be brought in the name of The People of the State of Illinois for the use of the STATE BOARD OF HEALTH against the offender, for debt. A bill of particulars, in the form of an account, may be required, and the action may be brought and prosecuted by the State's attorney, or by any other attorney employed by the STATE BOARD OF HEALTH.

Under the law approved May 29, 1877, in force July 1, 1877, Session Laws of 1877, page 154, the proceeding for practicing without the certificate was in form criminal, for the reason that the violator might, as a part of the penalty, be imprisoned in the county jail; and under that act a complaint or indictment was necessary. But under the present law there is no imprisonment permitted and it is, therefore, in every particular a civil proceeding. It is true, the present law provides that if the fine is not paid a mittimus shall issue and the defendant be committed until the fine is paid. But this imprisonment is a penalty for not paying the fine; it is not a penalty for practicing without a certificate.—Section 13, Law of 1887.

In the action brought for this penalty of fine the plaintiff is required to prove only that the defendant is practicing medicine within the meaning of this act—which defines such practice to consist of treating, operating on, or prescribing for any physical ailment of another, but does not prohibit service in cases of emergency or the domestic administration of family remedies. It is sufficient to prove that the defendant did any one of the acts prohibited in the county where suit is brought and within two years before the commencement of the action.—Section 14, Limitation Act. Chapter 83, Rev. Stat.

The burden is on the defendant to prove that he has a State certificate.—*People v. Fulda*, 4 N. Y. Sup. Ct. 945; 52 Hun. 65; *Benham v. State* (Ind.), 18 N. E. Rep. 454; *People v. Phippin* (Mich.), 37 N. W. Rep. 888.

It may be said that an action of debt is not an adequate remedy for punishing a transient violator of this law, for the reason that where a summons in debt is issued there must be at least five days between the issuing of the summons and the trial before a justice and a still longer period if brought in the Circuit Court; in the mean time there is nothing to prevent the defendant from departing from the county.

This is true. But the legislature saw fit, by the present act, to take away the criminal nature of the proceeding to recover the penalties and the only remedy left, if the defendant is about to depart, is by *capias* ad respondendum or attachment. The great object, however, is accomplished—the defendant is compelled to quit his practice and, if he departs after service of the summons, a judgment can be obtained against him and, if within the State, he can be arrested and committed to jail for his failure to pay the judgment.

The fact that the prosecution in these cases is a civil action and that the usee—the STATE BOARD OF HEALTH—is the real party in interest makes the action one which it is not the statutory duty of State's Attorneys to prosecute.—See Sec. 5, Chap. 14, Revised Statutes. Therefore, the STATE BOARD OF HEALTH may, if any State's Attorney neglects or refuses to prosecute, select some other attorney.

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NOTE.—THE STATE BOARD OF HEALTH, in order to secure a diligent and efficient enforcement of the Act, relinquishes all fines which may be imposed to the attorneys who prosecute.





